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SIPDIS

SENSITIVE

DEPARTMENT PASS USTR FOR BWEISEL AND TPOSNER
COMMERCE FOR ITA/JBENDER AND JKELLY

E.O. 12958: N/A

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SUBJECT: THAI PM APPROVES "INTERIM" RESUMPTION OF
AER-COVERED SERVICES INVESTMENTS

11. (SBU) Summary. MFA informed the Ambassador that Thai PM Thaksin has agreed to resume AER-covered services investments in exchange for US willingness to renegotiate the language in the proposed State/MFA exchange of letters. The renegotiation aims to provide the RTG with greater "legal comfort" in the event of a WTO challenge. Resumption of AER-covered approvals will be for three months, renewable for additional 3-month periods. The RTG stresses that the renewal of approvals will be governed by the perception that the US is willing to "join hands . . . to fend off any threat of Thailand being subject to litigation at the WTO." Commerce must now implement this decision -- septel will detail the RTG's intentions in this regard. End Summary.

12. (SBU) On February 24 the Ambassador (accompanied by Embassy Economic Counselor) met with MFA PermSec Krit Garnjana to be briefed on the RTG's proposed approach on the Treaty of Amity and Economic Relations (AER). Krit was accompanied by MFA Americas D-G Nongnuth Phetcharatana and MFA Legal Affairs Director Virachai Plasai.

13. (SBU) Krit reported that the Prime Minister's "Kitchen Cabinet" had discussed this issue in its February 23 meeting and had agreed on an approach to the AER issue. Krit provided us with the following points:

Begin RTG Paper

-- A small group meeting with the Prime Minister regarding the AER on 23 February 2006 has produced quite a positive outcome.

-- Overarching concept: The Prime Minister underlined that Thailand join hands with the US to fend off any threat of Thailand being subject to litigation at the WTO. Working assumption on this is one of Thailand and the US being on the same side -- not on opposite sides.

-- The Prime Minister endorsed the following package consisting of three elements:

1) Thailand is ready to undertake interim measure to resume granting benefits under
the AER to US persons;

2) A renegotiation of the Exchange of Notes such that adequate legal comfort is
provided for Thailand vis a vis possible WTO
litigation;

3) Interim measure will be in force for renewable periods of three months duration.

-- We need to set a timeframe for the interim measure because a new, previously un contemplated factor has emerged, that is, the possibility of FTA negotiations being left pending for an open-ended period, which in turn entails an equally open-ended prolonged exposure of Thailand to the risk of being litigated against at the WTO.

-- We would like to stress that the above safeguard action will be governed solely by considerations related to our quest for adequate cover against exposure to litigation at the WTO.

End RTG Paper

14. (SBU) Krit stressed that, for the PM, the "overarching concept" would guide the RTG's actions, that is, as long as Thailand and the US were working together toward the same goal (helping Thailand fend off a WTO challenge), Thailand would be forthcoming on maintenance of the interim measure. Krit added that Thailand is encouraged by the fact that, by its actions thus far, the US has displayed this common interest. "Your willingness to the exchange of notes is a sign of this," he said.

15. (SBU) The PermSec stated that the AER is being treated separately from the FTA. "This is not a negotiating gambit," he said. "Mixing this with the FTA will result in crossed

wires and a short circuit."

16. (SBU) Krit conceded that the current actual threat of a WTO challenge has diminished. "A year ago," he said, "the threat was greater -- the FTA with Japan was not completed." He appealed for the US to exhibit an attitude consistent with the "overarching concept." "Let's try to find a soft landing," he said. Alluding to certain Cabinet members who may previously have used the AER issue as a possible negotiating lever in the FTA talks, or may have taken a hard line for other reasons, he said, "We need to find a graceful exit for the Cabinet; we hope to find a ladder for the Cabinet to use to climb down (from previous positions)." We expect the RTG to provide us with proposed alternate language for the exchange of letters shortly.

Next Steps

17. (SBU) Krit made it clear that the interim measure can be effected immediately, i.e., it is not conditional on agreement on the exchange of letters language. Authority to resume AER-covered services investments now rests with Commerce PermSec Karun Kittisataporn. (Note: We are not 100 percent clear on the legal status of "Kitchen Cabinet" decisions -- it may be necessary for the full Cabinet to authorize sending a note to Karun that endorses the "Kitchen Cabinet" decision (this possibility was alluded to by Krit). The full Cabinet is expected to meet on February 28.) We are meeting with Karun on February 27 and will report on how he intends to proceed, specifically, when approvals will resume.
BOYCE